



GOVERNMENT OF INDIA

Chandigarh Administration Gazette

Published by Authority

No. 24] CHANDIGARH, THURSDAY, FEBRUARY 20, 2020 (PHALGUNA 1, 1941 SAKA)

CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 17th January, 2020

No. 13/1/9698-HII(2)-2020/1084.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 81/2016, dated 21.11.2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

BALAK RAM, HOUSE NO. 260, VILLAGE DHANAS, UNION TERRITORY, CHANDIGARH.
(Workman)

AND

GYMKHANA PUB & BAR, SCO NO. 109-111, SECTOR 17-B, CHANDIGARH THROUGH ITS PROPRIETOR. (Management)

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

2. Case of the workman in brief is that he was appointed as Head Waiter on 15.09.2011 and remained in un-interrupted employment upto 24.10.2015 when his services were illegally & wrongly terminated by refusing of work. He was drawing ₹ 2,500/- as wages per month which were less than the minimum rate of wages applicable to the management. On 24.10.2015 the management refused work to the workman without assigning any reason and notice. For his reinstatement the workman lodged a complaint with the Labour Inspector, Union Territory Chandigarh. The Labour Inspector fixed a number of dates for an amicable settlement but the management did not appear before the Labour Inspector. The workman than served upon the management a demand notice dated 21.12.2015. The management did not reply the demand notice. The Conciliation Officer, Union Territory, Chandigarh was requested for his intervention into the matter. The Conciliation Officer fixed a number of dates for an amicable settlement but the management did not appear before the Conciliation Officer on any date fixed for settlement. Refusal of work which amounts to termination is retrenchment under Section 2(oo) of the ID Act. The management has also violated Section 25-F of the ID Act. No charge sheet was issued, no inquiry was held and the workman was not paid retrenchment compensation at the time of termination. The violation of the same makes the termination void. Action of the management in terminating

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the services of the workman is illegal, wrong, motivated, against the principles of natural justice and unfair labour practice. Ultimately, it is prayed that the workman be reinstated with continuity of service and full back wages as the workman remained unemployed during the period i.e. from the date of termination to till date. The workman be also paid arrears of less paid minimum wages.

3. The management contested the case of the workman and filed written statement raising preliminary objection that there is no relationship of employee & employer between the workman and management. On merits, it is pleaded that the workman was never in employment of the management and there is no relationship of employee & employer between the workman & management so allegation of termination do not arise at all. All the averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workman be rejected.

4. The workman filed replication reiterating the averments of his case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed :—

1. Whether there is no employer-employee relationship between management and workman ? OPM
2. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
3. Relief.

5. In support of the case, the workman examined himself as AW1. The workman also examined Shri Harjinder Kumar – Partner, M/s Gymkhana Pub & Bar as AW2 and Shri Arun Kumar – Clerk, Office of the Assistant Labour Commissioner, Union Territory, Chandigarh as AW3. Learned representative for the workman closed the evidence. On the other hand, the management examined Shri Harjinder Kumar – Partner as MW1. The Partner of the management closed the evidence.

6. I have heard learned representatives for the parties and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

ISSUE NO. 1 & 2 :

7. Onus to prove issue No.1 was on the management whereas onus to prove issue No.2 was on the workman but both these issues are taken up to avoid repetition of discussion and for the same of convenience. In order to prove his case the workman stepped into the witness box as AW1 and deposed that he was appointed as Head Waiter on 15.09.2011 and remained in the uninterrupted employment upto 24.10.2015 when his services were illegally & wrongly terminated by refusing of work. He was drawing ₹ 2,500/- per month as wages. On 24.10.2015 the management refused work to him without assigning any reason and notice. He lodged complaint with the Labour Inspector on 29.10.2015 and thereafter served upon the management demand notice dated 21.12.2015 but the management did not reply the same. Refusal of work which amounts to termination is retrenchment under Section 2(oo) of the ID Act. The management had also violated the provisions of Section 25-F of the ID Act. No charge sheet was issued, no inquiry was held and he was not paid retrenchment compensation at the time of termination. Action of the management in terminating the services of the workman is illegal, wrong, motivated, against the principles of natural justice and unfair labour practice.

8. The workman also examined summoned witness Shri Harjinder Kumar–Partner of the management as AW2 who deposed that he could not brought the summoned record i.e. Form ‘F’ and ‘B’ as he could not trace the same. The workman further examined the summoned witness Shri Arun Kumar–Clerk in the office of the Assistant Labour Commissioner, Union Territory Chandigarh as AW3 who deposed that the management is not registered under the Punjab Shop & Commercial Act as per office record.

9. Learned representative for the workman has argued that the workman was appointed as Head Waiter on 15.09.2011 and remained in uninterrupted employment up to 24.10.2015 when his services were terminated by refusing work and refusal of work which amounts to termination is retrenchment under

Section 2(oo) of the ID Act. He further argued that no charge sheet was issued, no inquiry was held and no retrenchment compensation was paid to the workman before terminating his services. He argued that termination of services of the workman is in violation of provisions of Section 25-F of the ID Act and principles of natural justice. He prayed for reinstatement of the workman with continuity of service and full back wages.

10. On the other hand, learned representative for the management examined Shri Harjinder Kumar—Partner as MW1 who deposed that the present claim has been filled with the sole *mala fide* intension of extortion as there is no relationship of employer & employee between management and the claimant-workman. Name of the claimant-workman does not appear anywhere in the original attendance and wage register from 2012-13 to 2015-16 Exhibit ‘MX1’ to ‘MX4’. The management is covered under the provisions of ESIC and the mandatory returns of the contribution in the prescribed Form 5 are duly submitted half yearly under the proper receipt from ESIC and perusal of the same reveals that the name of the claimant-workman is not in the list of employees in any of the periodical returns. Since the claimant-workman was never in the employment of the management so there was no occasion for any alleged refusal of work or termination of service.

11. Learned representative for the management has argued that M/s Gymkhana Pub & Bar is the style name of the establishment, which is owned by Nayyar & Company. The establishment of the management is covered under the provisions of ESIC but the name of the claimant-workman is not in the list of employee. The claimant was never in the employment of the management. Hence, there was no occasion for alleged refusal and termination of service. There never exists employer-employee relationship. He relied upon citation **Workmen of Nilgiri Coop. Marketing Society Versus State of Tamilnadu & Others, AIR 2004 SC 1639; N. C. John Versus Secretary Thodupuzha Taluk Shop & Commercial Establishment Workers’ Union & Others, 1993 Lab. I.C. 398; Indira Gandhi National Open University Versus Union of India & another, WP (C) No.901 to 905, 912, 916, 917, 919, 921, 922, 932 & 991 of 2014 decided by Hon’ble High Court on 05.08.2015 and Swapan Das Gupta & Others Versus The First Labour Court of West Bengal & Others, 1975 Lab I.C. 2992** He prayed for dismissal of the present industrial dispute.

12. After giving careful consideration to the rival contentions of both the sides, I find that the workman is alleging him as Head Waiter with the management from 15.09.2011 to 24.10.2015 and further alleging that the management has refused work to him without assigning any reason and notice. But the management is denying these facts and denying the relationship of employer-employee between management and the workman and placed reliance on citation **Workmen of Nilgiri Coop. Marketing Society Versus State of Tamilnadu & Others (supra)** in which was held that it is well settled principles of law that the person who sets up a plea of existence of relationship of employer-employee the burden would be upon him. Issue of relationship of employer-employee goes to the route of jurisdiction of the Labour Court and is incidental to the issue raised by the petitioner that he was illegally terminated by the management. If he was not employee of respondent there could have been no question of his illegal termination would rise only if he has employee of the respondent. In other citation Hon’ble Delhi High Court in the matter titled **Indira Gandhi National Open University Versus Union of India & another** while deciding the issue of relationship of employer-employee hold similar views. Further in citation **N. C. John Versus Secretary Thodupuzha Taluk Shop & Commercial Establishment Workers’ Union & Others (supra)** it is held by Hon’ble Kerala High Court that the burden of proof being on the workmen to establish the employer-employee relationship and adverse inference cannot be drawn against the employer-employee relationship. Further the same view has been taken in **Swapan Das Gupta & Others Versus The First Labour Court of West Bengal & Others (supra)**.

13. In the present case in hand heavy onus lies on the workman and the workman simply stating that he was the employee of the management but during his cross-examination the workman stated that he had not brought any proof with him with respect to above service. He cannot read original attendance and wages register from 2012-13 to 2015-16 and he did not know whether his presence was marked by the management or not. He had seen register i.e. Exhibit ‘MX1’ to ‘MX4’ and his ESI was not being deducted. He has not given any written complaint to any authority in any matter concerning his service. Meaning thereby the workman has failed to produce on record even a single document which proves that he was working with the

management as the management has produced the return of contributions Form 'F' Exhibit 'W1' in which, at page 2, employer name and address and list of employees has been mentioned which did not depict the name of the workman. The management had also placed on record copy of register of employees where presence of the employees had been marked. Exhibit 'MX1' to 'MX4' also do not depict the name of the workman meaning thereby the management has produced the attendance register and register from 2012-13 to 2015-16 which did not bear his name. The management also produced returns of contribution submitted to the ESIC from April 2012 to April 2015 which also did not bear the name of the workman. Moreover, the workman never made a complaint to any ESIC authority that his ESI contribution is being not deducted by the management. The workman has failed to prove that he has ever worked with the management. Hence, there is no relationship of employee-employer between the workman and the management. Accordingly, issue No.1 is decided in favour of the management and against the workman. Since there is no employer-employee relationship between the parties issue No. 2 has become redundant.

RELIEF :

14. In the light of findings on the issue No. 1 above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.),

(ANSHUL BERRY),

The 21.11.2019.

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No.PB0095.

CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 17th January, 2020

No. 13/1/9703-HII(2)-2020/1094.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 78/2016, dated 09.12.2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT, Chandigarh between :

DEEP MALA, W/O SHRI SANJEEV KUMAR, R/O HOUSE NO. 737, PHASE-I, RAM DARBAR, UNION TERRITORY, CHANDIGARH. (Workman)

AND

1. BRANCH MANAGER, PUNJAB STATE CO-OPERATIVE BANK, SECTOR 32-D, CHANDIGARH THROUGH BRANCH MANAGER SHRI SHAM LAL TANEJA.

2. THE PUNJAB STATE CO-OPERATIVE BANK, SCO NO. 175/187, SECTOR-34-A, CHANDIGARH THROUGH ITS REGIONAL MANAGER.(Management)

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

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2. Case of the workman in brief is that she was appointed as Sweeper five years back i.e. in the year 2011 being appointed by management No.1 through management No.2 on monthly salary of ₹ 500/- and joined as per the duty roster prepared and signed under the supervision of concerned official of bank without any complaint in writing or verbal or enquiry. She is a 'workman' as defined under Section 2 of the ID Act. She had worked for more than 240 days continuously. The work & performance of the workman was satisfactory. No disciplinary action, whatsoever, has been taken by the management against her except that only recently the management had started harassing the workman by making frivolous charge against him. The management is known for being close-minded towards the employees whereby the legally permissible benefits / privileges like ESI, Provident Fund, Bonus, Earned Leaves, casual leave, sick leave, national & festival holidays, payment of over time, are not extended. Even the minimum basic wages as fixed or revised under the Minimum Wages Act, 1948 are not being paid to the workman and other employees. The salary used to pay to the workman against the receipt of voucher and the management also maintains the record for the same. The salary of the workman was never increased despite her repeated requests to increase the salary and also to pay the same as per the norms and rules of the bank. The management had denied the statutory leaves to the workman so they have violated the provisions of the Factories Act as well as National and Festival holidays (Causal & Sick Leave Act). The management also threatened the workman of dire consequences on her demand of increase in dearness allowance. Management No.2 had denied the resumption of her duties on 12.05.2015 when the workman went to join the duty without any rhyme or reason and terminated the services of the workman. This action of the management is against the principles of natural justice and provision of the ID Act and liable to be set aside as no inquiry was conducted against the workman. The deliberate refusal of the management to the workman to resume her duties amounts to illegal termination in violation of provisions of Section 25-F, 25-G & 25-H of the ID Act. No charge sheet was issued and no enquiry was held by the management while terminating the services of the workman. The workman was forced to remain unemployed and is continuing to be out of employment due to high-handedness and illegal termination by the management. Ultimately, it is prayed that the workman be reinstated into service with continuity of service and with back wages & benefits.

3. The management contested the case of the workman and filed written statement raising preliminary objection that Smt. Deep Mala (hereinafter called 'claimant') is not covered under the definition of 'workman' as defined under the ID Act. On merits, it is pleaded that the claimant was engaged to work as daily Sweeper on demand for duration varying from 20 to 30 minutes with management No.1 in lieu of which she was paid the nominal charges. She was never appointed by management No.2. The claimant worked with other shops and establishment as Sweeper/Helper as per her own convenience. She had without any prior notice / information been abstaining from the work without notice from time to time. Management No.1 is branch of the banking institution which is frequented by public at large so proper cleaning is pre-requisite. The claimant when confronted with her inauspicious absence misbehaved with the staff officials in the presence of the customers and stated that she was not bound to inform the management for the same since she was not an employee of the management. During her absence for months together one Sanju Kumar was engaged for cleaning purposes. The management is a co-operative society registered under the Punjab State Co-operative Societies Act, 1963 engaged in banking business and function under the control of the Government of Punjab. The management has a set appointment procedure whereby the posts are advertised, applications are invited, test is conducted and thereafter appointment letter is issued to the successful candidates. Since the claimant is not covered under the definition of 'workman' as defined under the ID Act so she is not entitled to benefits like ESI, provident fund, bonus, earned leaves, casual leave, sick leave, national & festival holidays, payment of over time. Other averments of the case were denied and ultimately, it is prayed that the claim statement be dismissed.

4. The workman filed replication reiterating the averment of his case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed:-

1. Whether Smt. Deep Mala is not a 'workman' as defined under Section 2(s) of the ID Act ? OPM
2. Whether the services of Smt. Deep Mala were terminated illegally by the management, if so, to what effect and to what relief she is entitled to, if any ? OPW
3. Relief.

5. In support of the case, Smt. Deep Mala stepped into the witness box as AW1 and closed the evidence. On the other hand, the management examined Shri Harbarjinder Singh – Branch Manager as MW1 and closed the evidence.

6. I have heard learned representatives for the parties and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

ISSUE No. 1 & 2 :

7. Both these issues are taken up together to avoid repetition of discussion and for the sake of convenience. In support of the case, learned representative for the claimant examined the claimant as AW1, who deposed that she was appointed as Sweeper three & half years back in the year 2011 being appointed by management No.1 through management No.2 on monthly salary of ₹ 500/- and joined as such construction as per duty roster prepared and signed under the supervision of concerned official of the bank without any complaint in writing or verbal. She was performing her duties sincerely and during this period the salary of Sweeper was never increased. The workman went to join the duty on 12.05.2015 but management No. 2 refused to join her duty. No inquiry was conducted against the workman so she is entitled for reinstatement with all consequential benefits including pay salary, seniority and other attendant benefits as she has been illegally terminated.

8. Learned representative for the workman has argued that she was appointed as Sweeper in the year 2011 by management No.1 through management No.2 on salary of ₹ 500/-. Her performance was satisfactory. He did her duties sincerely but the management deliberately refused to join duties on 12.05.2015 when she went on duty. She had to remain unemployed so she is entitled for reinstatement with continuity of service and back wages and she come under the definition of the 'workman'. Reliance is placed on citation **Div. Manager, New India Assurance Co. Limited Versus A. Sankaralingam, 2008(10) SCC 698 and Bhavnagar Municipal Corporation etc. Versus Jadeja Govubha Chhanubha & Another, 2015(2) SCC (L&S) 513**. He prayed for reinstatement of the workman with continuity of service and full back wages.

9. On the other hand, the management MW1 deposed that the application is not maintainable as the claimant is not covered under the definition of 'workman'. The claimant was engaged to work as daily sweeper on demand for duration varying from 20 to 30 minutes with the management No.1, in lieu of which she was paid nominal charges. The present complaint has been filed with sole intention to harass and extract money. The claimant had misbehaved with the staff in the presence of the customers. After her absence one person namely Shri Sanju Kumar was engaged for cleaning purpose. She was not a regular employee of the management. She is not covered under the definition of 'workman'. He further deposed that she was paid salary ₹ 500/- per month. True copy of the voucher for payment made to the Sweeper is Exhibit 'R1' to R5 for the year 2011 to 2015. Since the claimant was never an employee of the management so there is neither any question of illegal termination nor any question of taking back the claimant with continuity of service.

10. Learned representative for the management has argued that the claimant does not fall within the definition of 'workman' because she is not a part time, regular or contractual. He came in the premises of management for 20 to 30 minutes. She herself remained absent from duties and left the work. Thereafter other Sweeper has been engaged by management No.1. Moreover facts of the claim statement is contradictory to evidence led by the workman. Neither any appointment letter nor any identity card has been placed on record by the claimant. The payment voucher placed on record Exhibit 'R1' to 'R5' does not belong to the claimant rather belong to different persons. He has placed reliance on **Vishwanath Pandey Versus M/s Madan Gopal Chandra, W.P. (C) No. 8170 of 2016 & CM Nos. 33793-94 of 2016** decided on 20.09.2016 by **Hon'ble Delhi High Court; Uttaranchal Forest Hospital Trust Versus Dinesh Kumar, (2008)1 SCC (L&S) 229; The Range Forest Officer Versus S.T. Hadimani, (2002)3 SCC 25 and Surendranagar District Panchayat & Another Versus Jethabhai Pitamberbhai, (2005)8 SCC 450**. He prayed for dismissal of the present industrial dispute.

11. After thoughtfully considering the rival contentions of both the sides, I find that it is not disputed that the workman was working with management No.1 as Sweeper for cleaning purpose. But the claimant had failed to produce on record any document through which it can be proved that she was working with management No.1 as regular employee or part time employee or contractual employee. No appointment letter nor any identity card has been produced by the claimant. She is alleging herself to be a part time employee and her representative is relying upon the cross-examination of the claimant and trying to take her under the definition of 'workman'. But there is no evidence on record that the claimant had ever worked with management No.1 through proper channel rather the claimant is herself taking the contradictory plea in evidence as compared to claim statement filed by herself. In her cross-examination she had stated that she was working as Sweeper and Peon, which is itself contradictory. Further perusal Exhibit 'R1' voucher for the year 2011 reveals that it belongs to one lady named Meenu, who providing the sweeping service for which she was being paid. Exhibit 'R2' voucher for the year 2012 shows that it belongs to lady named Meenu. Exhibit 'R4' payment voucher for the year 2014 dated 05.03.2014 and 04.07.2014 bears the name of one Sanju Kumar to whom payment was made for sweeping purpose. Hence, the claimant failed to prove employee-employer relationship by way of documentation or identity card or any other evidence which is necessary to prove the employer-employee relationship. Reliance is placed on **Vishwanath Pandey Versus M/s Madan Gopal Chandra (supra)** wherein the Hon'ble Delhi High Court has held that the onus of proving the employee and employer lies on the petitioner. Moreover, statement of MW1 corroborates this version that the claimant used to come to the bank for cleaning purpose for 15 to 20 minutes per day. Further law is well settled in citation **Uttaranchal Forest Hospital Trust Versus Dinesh Kumar (supra)** by Hon'ble Supreme Court has held that the appointment of person on temporary basis and that too for hourly basis do not fall under the definition of term 'workman'. Hence, there is no relationship of employer-employee between management and workman as no duty roster was prepared in respect of the claimant by the management. Further law is settled in citation **The Range Forest Officer Versus S. T. Hadimani, (2002)3 SCC 25** and **Surendranagar District Panchayat & Another Versus Jethabhai Pitamberbhai**. Further the claimant has not brought any record to support her version so the claimant has failed to prove herself 'workman' by way of appointment letter, identity card. No notice was required to be given to the claimant as she had failed to lead evidence to show that she had worked actually worked for 240 days in a year preceding her termination. In the light of discussion made above, both these issues are decided against the claimant and in favour of the management.

RELIEF :

12. In the light of findings on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 09.12.2019.

(Sd.) . . . ,
(ANSHUL BERRY),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0095.

CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 30th December, 2019

No. 13/1/9694-HII(2)-2019/21255.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned

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hereby publish the following award bearing reference No. 32/2015, dated 14.11.2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT, Chandigarh between :

MOHAN LAL, S/O SHRI RAGHU NATH, EX-CONDUCTOR NO. 721, DEPOT NO. 1, CHANDIGARH TRANSPORT UNDERTAKING, PRESENTLY, R/O HOUSE NO. 554/1, SECTOR 41-A, CHANDIGARH. (Workman)

AND

1. HOME SECRETARY-CUM-SECRETARY TRANSPORT, UNION TERRITORY, CHANDIGARH.

2. DIVISIONAL MANAGER, CHANDIGARH TRANSPORT UNDERTAKING-CUM-DIRECTOR TRANSPORT, UNION TERRITORY CHANDIGARH. (Management)

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

2. Case of the workman in brief is that he was appointed as Conductor in July 1990 and there was no complaint against him in the initial stage but from the year 1994 some vested Inspectors made false complaints against him. The workman had replied to all the charges but the punishing authority without considering the same appointed Inquiry Officer and put the workman under suspension. During the suspension period address of the workman was House No. 385/1, Sector 41-A, Chandigarh but the Inquiry Officer sent the letters on address which was mentioned in his service book. The workman had brought to the notice of the authorities about his address but they did not mention the same in his service record so he could not receive the letters and the Inquiry Officer proceeded *ex parte* inquiry against him and proved the charges *ex parte* without giving opportunity of hearing to the workman. On the basis of all the inquiry reports, the workman was issued single cause notice comprising all the inquiry reports but the same were not received due to change of address so he could not reply the same and appear for personal hearing. But the punishing authority without considering the above said facts passed the dismissal order dated 02.12.2005 which is wholly illegal, arbitrary and against the punishment and appeal rules. The workman had not received the dismissal order as the same was sent back by the post master undelivered and after great persuasion and on enquiry the workman received the order from the department and thereafter immediately filed the appeal so there was no delay in filing the appeal. All the inquiries against the workman were conducted at the back of the workman. It was mandatory for the department to serve the notice personally upon the workman but without effecting personal service the workman was proceeded *ex parte*. Since the checking staff were making false reports for their vested interest so member of the union protested against this illegal acts of the checking staff. Thereafter meeting of the union and management was held and with the consent of the union and management it was decided to frame certain guidelines in order to avoid false implication of the Conductors. Thereafter instructions were issued by the management and it was provided that the Inspectors should record the statement of passengers who are found without tickets and conductors have not issued the tickets to them after collecting fare. Further it was also made mandatory to check the cash of the Conductor to know the excess amount in the cash bag of the Conductors. In these cases neither statements of passengers were recorded nor the cash of the workman was checked so whole cases against the workman are illegal and *mala fide*. The findings of the Inquiry Officer are illegal and based on hearsay evidence only as statements of Inspectors have not been supported by any other evidence. Order of punishing authority is illegal and non-speaking in nature. The punishing authority had not given any reasoning in support of his findings. Defence of the workman has not been accepted at all. Order of the appellate authority is also illegal and has been passed in violations of Rule 19 of Punjab Civil Services (Punishment & Appeal) Rules, 1970 as made applicable to the workman. The appellate authority failed to consider the grounds of appeal and no reasoning have been given for not accepting the same. Findings of the appellate authority that the appeal was filed after two years are wrong. The workman requested several times to withdraw the illegal order of dismissal dated 02.12.2005 and order of the appellate authority dated 08.11.2010 / 18.11.2010 but the management failed to withdraw the same. Ultimately, it is prayed that the workman be reinstated with continuity of service and full back wages.

3. The management contested the case of the workman and filed written statement raising preliminary objection that the claim filed by the workman is time barred as the same has been filed much after passing of the impugned order dated 02.12.2005. On merits, it is pleaded that the workman had committed so many frauds and punished for the lapses during his service period. The competent authority was fully agreed with findings submitted by the Inquiry Officers and copies of the same were supplied to the workman to make a representation. The workman failed to attend the personal hearing on various dates in connection with four charge sheets bearing Memo No.3517 dated 17.08.1994, Memo No.928 dated 20.05.1997, Memo No.14143 dated 25.09.2001 and Memo No.16778 dated 10.12.2003. He had personally received summons in all the four cases but neither he appeared for personal hearing nor sent any information. He was given an opportunity with regard to say something by way of his personal hearing but he failed to avail the same. The punishing authority after going through the findings of the Inquiry Officer and facts & circumstances of each case has come to the conclusion that the veracity of the material facts stands proved beyond any doubt. The Inquiry Officer afforded proper & reasonable opportunity to the workman to defend his cases. The workman was a habitual offender and was placed under suspension in fraud case of ₹ 180/-. The punishing authority therefore came to the conclusion that the workman was not a fit person to be retained in service. The workman failed to submit his reply to the charge sheets. The competent authority had ordered to conduct the departmental inquiries to meet with the natural justice to the workman by appointing the Inquiry Officers. The charges against the workman in respect of charge sheet No.3517 dated 17.08.1994 stands proved *ex parte* as he failed to come up for his defence despite the fact that he was having fully knowledge about the date, time and place of inquiry and he personally received the summons under his own signatures well in time. In respect of the cases the workman attended the inquiries. The workman was placed under suspension from 20.06.2005 in another fraud case of fraud of 180/- as he was habitual offender for fraud. He never came to the office as well as Duty Section / Booking Branch as his head quarter during his suspension period was Chandigarh as such his dismissal order were sent at his permanent address as well as local address of the workman through speed/registered post and the same was not received back undelivered. The inspectorate staff has made report against the workman as per fraud made by him. All the cases, the workman was directed to submit the reply to the charge sheet but he failed to submit the same and he only submitted the reply to the charge sheets issued to him *vide* memo dated 20.05.1997 and 10.12.2003 which were considered and found unsatisfactory. The competent authority then ordered to hold a regular departmental inquiry in the charge sheets issued *vide* Memo No. 3517, dated 17.08.1994, Memo No. 14143, dated 25.09.2001 and Memo No. 16778, dated 10.12.2003 by appointment Shri N.C. Puri-General Manager, CTU-II as Inquiry Officer and Shri Surinder Kumar-General Manager-I was appointed as Inquiry officer in the charge sheet issued *vide* Memo No. 928, dated 20.05.1997. The Inquiry Officers conducted the inquiries by following proper procedure laid down under punishment & appeal rules. Order dated 18.11.2010 has passed by the appellate authority after affording due opportunity of personal hearing was also afforded to the workman before passing the impugned order. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workers' union be rejected.

4. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

1. Whether the claim of the workman is time barred ? OPM
2. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
3. Relief.

5. In support of the case, the workman examined himself as AW1. Learned representative for the workman closed the evidence. On the other hand, learned Law Officer for the management tendered into evidence inquiry files of the workman and closed the evidence.

6. I have heard learned representative for the workman and learned Law Officer for the management and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

ISSUE NO. 1 :

7. Onus to prove this issue was on the management but learned Law Officer for the management has not pressed this issue during the course of arguments. This issue is decided against the management being not pressed.

ISSUE NO. 2 :

8. Onus to prove this issue was on the workman and to discharge the same he himself stepped into the witness box as AW1 deposed that that he was appointed as Conductor in July 1990 and there was no complaint against him in the initial stage but from the year 1994 some Inspectors made false complaints against him who have vested interest. The allegation of misappropriation of ₹ 6/- is false as he had issued correct ticket to the passengers and load was of small quantity for which no ticket is required to be has to be issued. Second charge of fraud of ₹ 4/- is also false as the passengers boarded the bus from Balongi and alighted at Balongi. When the person boarded the bus from the same place and alighted from the place the question of charging fare does not arise. Third charge is also false as the workman was in process of issuing the tickets as the distance between Kurali to Sahoran is only two kilometres and he was in process of issuing tickets when the bus was checked. He further deposed that he had issued tickets of right place from Lalru to Ambala and the tickets were rightly punched but the checking staff on suspicion made a false complaint for the travelling of the passengers from Derabassi to Ambala City. Next charge is also false as the distance between the Kharar to Desu Majra is only two kilometres and he was still in process of issuing the tickets when the bus was checked. Next charge is also false as he had issued ticket for a load from Delhi to Pipli of half ticket of ₹ 40/- but the checking staff made a false complaint of the said load from Delhi to Chandigarh. He further deposed that he had replied to all the charges but the punishing authority without considering the same appointed Inquiry Officers and he was put under suspension. During the suspension period his address was House No. 1385/1, Sector 41-A, Chandigarh but the Inquiry Officer sent the letters on address which was mentioned in his service book. He had brought to the notice of the authorities his address but they did not mention the same in his service record so he could not receive the letters and the Inquiry Officer proceeded *ex parte* inquiry against him and proved the charges *ex parte* without giving opportunity of hearing to him. He further deposed that on the basis of all the inquiry reports he was issued single show cause notice comprising all the inquiry reports but the same were not received due to change of address so he could not replied the same and appeared for personal hearing. The punishing authority without considering the facts passed the dismissal order dated 02.12.2005 which is illegal, arbitrary and against the punishment and appeal rules. He further deposed that he had not received the dismissal order as the same was sent back by the postmaster undelivered and after great persuasion and on inquiry he received the order from the department thereafter immediately filed the appeal so there was no delay in filing the appeal. All the inquiries against him were conducted at his back. He also deposed that since the checking staffs were making false reports for their vested interest so with the consent of the union and the management it was decided to frame certain guidelines in order to avoid false implication of the Conductors. Thereafter instructions were issued to record the statement of the passengers and check cash of the Conductors but in the present case neither statements of passengers were recorded nor his cash was checked. Copies of instructions are Mark 'A' to 'C'. Findings of the Inquiry Officer are illegal and based on hearsay evidence only as statements of the checking is not supported by some other supporting evidence. The order of the appellate authority is illegal and has been passed in violation of Rule 19 of Punjab Civil Services (Punishment & Appeal) Rules 1970 as the appellate authority failed to consider the grounds of appeal and no reasoning have been accepted. Copy of appeal and order passed therein is Exhibit 'W1' & 'W2'.

9. Learned representative for the workman has argued that the workman was appointed as Conductor in July 1990 and there was no complaint against him in the initial stage but later on some vested Inspectors made false complaints against him and allegations of misappropriation of ₹ 6 is false as load in question was small quantity so tickets need not be issued, second charge of fraud of ₹ 4 is also false the passengers boarded

the bus and alighted without tickets at same place and third charge is also false as the workman was in process of issuance of tickets as distance from Kurali to Sahoran is only two kilometres. Further next charge sheet is also false as distance between Kharar to Desu Majra is only two kilometres and the workman was still in process of issuing the tickets and next charge is also false as workman had issued tickets for a load from Delhi to Pipli of half ticket of ₹ 40/- but the checking staff made a false complaint of said load from Delhi to Chandigarh. It is further argued that the workman was charge sheeted on 25.09.2001. No report of way bill was made by the checking staff regard to alleged fraud and way bill was not produced and there was no statement of passengers. Further the inquiry report was not supplied to the workman. Further in another charge sheet of dated 20.05.1997 no statement of passengers was recorded and there was no admission by the workman. It is further argued that another charge sheet was dated 17.08.1994. Lastly there was charge sheet dated 10.12.2003 and learned representative for the workers' union has referred page 27, 53, 85 of inquiry file in which the complaint was made to the Director Transport that false reports was made and the workman had given tickets of '40 and load was from Delhi. Punched ticket for ₹ 40/- issued before checking and before closing ticket by the Inspectors at the time of checking is clear from the way bill at page 53. He further argued that for all the inquiry reports the workman was issued single show cause notice. The workman had not received dismissal order. Inquiries were conducted against the workman at the back of the workman. Hence order of punishment authority is illegal and non-speaking. Further order of appellate authority is illegal as the appeal was filed within limitation from the date of knowledge. He has placed reliance upon citation **Ms. G Vallikumari Versus Andhra Education Society & Others, 2010(2) SCC 497** and **State of Punjab Versus Dr. Harbhajan Singh Greasy, 1996(9) SCC 322**. He also referred to order of Hon'ble Central Administrative Tribunal passed in **Surinder Singh Versus Union Territory Chandigarh through Home Secretary-cum-Secretary Transport & Others, OA No. 60/183/2015** decided on 23.11.2017.

10. On the other hand, learned Law Officer for the management tendered into evidence inquiries files of the workman and closed the evidence.

11. Learned Law Officer for the management has argued that statement of claim filed by the workman is time barred. Order dated 02.12.2005 has been by the competent authority after affording full opportunity to the workman. Order dated 18.11.2010 was passed by the appellate authority after affording due opportunity and personal hearing so allegation levelled by the workman is wrong and denied whereas charges are legal and justified. The competent authority fully agreed by the findings of the Inquiry Officer. Copy of same were supplied to the workman *vide* different memos but the workman failed to reply to the charge sheet so principles of natural justice has been followed. Order is legal and valid. He prayed for dismissal of the present industrial dispute.

12. After giving my careful considerations to the rival contentions of both the sides I find that it is nowhere disputed that the workman was appointed in July 1990 and was charge sheeted on difference dates i.e. 17.08.1994, 20.05.1997, 25.09.2001 and 10.12.2003. It is also nowhere disputed that as per assertion of the workman, he had replied to all the charges but the punishing authority without considering the same appointed the Inquiry Officers and the workman was put under suspension. As per averments of the workman, he was issued single show cause notice but the same was not received due to change of address. But as per contra the charge sheet served to the workman was legal & justified.

13. From the perusal of the file, I find that inquiries files with regard to different charge sheets have been duly attached with the file. As regards charge sheet dated 17.08.1994 is concerned in which the workman was charge sheeted for misappropriation and for this lapse he was charge sheeted *vide* Memo No. 3517/DM/CTU-III/94, dated 17.08.1994. During the course of checking one passenger was travelling from Kurali to Mohali Barrier with load of one ticket. Further as per charge sheet dated 20.05.1997 the workman had guilty of defrauding ₹ 56/- from the Government revenue which amounts to grave misconduct on his part in which the workman had collect full fare of ₹ 56/- at the rate ₹ 7/- from the passengers and had not issued tickets to the passengers. Thirdly on 10.12.2003 the workman was charge sheeted for defrauding ₹ 126/- by not issuing tickets of the load and charge sheet dated 25.09.2001 was also served upon the workman for defrauding ₹ 36/- from the Government revenue which amounts to misappropriation on his part. As per inquiry files the

workman was directed to submit reply to the charge sheet but he failed to submit the same and he had only submitted reply to the charge sheet issued to him *vide* Memo dated 20.05.1997 and 10.12.2003 which was considered and found unsatisfactory then the competent authority ordered to hold an departmental inquiry into charges by appointing different Inquiry Officers who conducted the inquiries by following proper procedure laid down under Punishment & Appeal Rules. In inquiry of the charge sheet dated 17.08.1994 the workman was proceeded against *ex parte*. The competent authority agreed with the findings of the Inquiry Officer and copy of the same were supplied to the workman *vide* different memos to make representation. The workman failed to appear for the personal hearing in connection with four charges. After going through the findings of the Inquiry Officers and facts & circumstances of each case I came to the conclusion that veracity of material facts stands proved beyond any doubt. Order whereby the punishing authority came to the conclusion that the workman is not fit person to be retained in service and dismissed him from service is legal and valid. The law is well settled in case **Bank of India & Others Versus Degala Suryanarayana, CA No. 3053 and 3054 of 1997 decided on 12.07.1999 by the Hon'ble Supreme Court of India** in which it was held as under :—

“12. Regulation 7 of the Bank of India Officer Employees (Discipline and Appeal) Regulations, 1976 accords with the settled service jurisprudence and provides as under :—

7. **Action on the inquiry report.**—(1) The Disciplinary Authority, if it is not itself the Inquiry Authority, may for reasons to be recorded by it in writing, remit the case to the Inquiring Authority for fresh for further inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of regulation 6 as far as may be,

(2) The Disciplinary Authority shall, if it disagrees with the findings of the Inquiring Authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the Disciplinary Authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in regulation 4 should be imposed on the officer employee it shall, notwithstanding anything contained in regulation 8, make an order imposing such penalty.

(1) if the Disciplinary Authority having regard to its findings on all or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the officer employee concerned.

13. In the case at hand a perusal of the order dated 5.1.1995 of the disciplinary Authority shows that it has taken into consideration the evidence, the finding and the reasons recorded by the Enquiry Officer and then assigned reasons for taking a view in departure from the one taken by the Enquiry Officer. The Disciplinary Authority has then recorded its own findings setting out the evidence already available on record in support of the finding arrived at by the Disciplinary Authority. The finding so recorded by the Disciplinary Authority was immune from interference within the limited scope of power of judicial review available to the Court.”

14. Further in case **Union of India (UOI) & Others Versus Parma Nand, Civil Appeal Nos. 1709 of 1988 with SLP (Civil) No. 6998 of 1988** it has been held by the Hon'ble Supreme Court of India that the Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where findings are not arbitrary or utterly perverse. Imposing punishment is matter exclusively within the jurisdiction of competent authority. The Tribunal has no power to substitute its own discretion for that of authority if penalty can lawfully be imposed on proved misconduct. Adequacy of penalty not matter for the Tribunal to be concerned

with unless penalty *mala fide*. The Tribunal cannot interfere with penalty if conclusion of Inquiry Officer based on evidence even if part of it found to be irrelevant or extraneous to matter. Further reliance is placed on case **Uttarakhand Transport Corporation (Earlier known as U.P.S.R.T.C.) & Others Versus Sukhveer Singh, Civil Appeal No. 18448 of 2017 decided on 10.11.2017** and **Apparel Export Promotion Council Versus A. K. Chopra, CA Nos. 226-227 of 1999 decided on 20.01.1999 by Hon'ble Supreme Court of India** .

15. In the present inquiries has been conducted as per procedure and principles of natural justice so the punishment order passed is legal and valid. Accordingly, this issue is decided against the workman and in favour of the management. .

RELIEF :

16. In the light of findings on the issue No. 2 above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 14.11.2019.

(Sd.) ,
(ANSHUL BERRY),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0095.

CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 30th December, 2019

No. 13/1/9695-HII(2)-2019/21292.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 88/2016 dated 14.11.2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between:

OM PARKASH S/O LATE SHRI ZAMIDAR RIO HOUSE NO.210, DADU MAJRA COLONY, CHANDIGARH SINCE DECEASED THROUGH HIS LEGAL REPRESENTATIVE

1. SANTOSH KUMARI—WIFE
2. PAWAN KUMAR—SON BOTH R/O # 210, SECTOR 38(W), CHANDIGARH.
3. BABITA W/O RAJIV KUMAR D/O LATE SHRI OM PARKASH, R/O HOUSE NO.1600, SECTOR 52, CHANDIGARH. (Workman)

AND

1. MANAGING DIRECTOR, M/S SECURITRANS INDIA PRIVATE LIMITED, REGD. OFFICE 10, DDA, COMMERCIAL COMPLEX, NANGAL RAYA, NEW DELHI—110 046.
2. REGIONAL MANAGER, NORTH, M/S SECURITRANS INDIA PRIVATE LIMITED, SCO NO.907, 1ST FLOOR, NAC MANIMAJRA, UNION TERRITORY, CHANDIGARH. (Management)

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'IDAct').

*This is Digitally Signed Gazette. To verify, visit :
<https://egazette.chd.gov.in>*

2. Case of the workman in brief is that he was orally appointed by management No.2 as Cash Officer and joined his service under management No.2 on 01.10.2005 on monthly wages. There is no condition of service stipulating the terms and age of employment or any agreement between the management and the workman or workmen union. The workman had rendered his continuous regular services of more than 10 ½ years with the management No.2 and has put in continuous regular service of more than 240 days in a calendar year preceding the date of illegal termination. Management No.2 orally terminated the services of the workman with effect from 20.04.2016 without any show cause notice or notice pay, without any charge sheet or any inquiry and without any retrenchment compensation. At the time of retrenchment, the workman was drawing '21,209/- per month wages. After illegal termination of the workman from his services, the management had appointed new hands. Juniors to the workman are still in services with the management. The management has not complied with the provisions of Section 25-F, 25-G & 25-N of the ID Act. Work & conduct of the workman during the course of his employment remained very satisfactory and no inquiry, charge sheet was ever issued or initiated during his employment or after illegal termination of services. The workman is unemployed since termination of his services and has no source of livelihood and is physically, mentally and medically fit to perform his duties. After illegal termination of services, the workman issued demand notice dated 29.04.2016 demanding his reinstatement with continuity of service with full back wages but the management did not accede to the request of workman. In pursuance to above demand notice, the conciliation proceedings before the Conciliation Officer-cum-Assistant Labour Commissioner, Chandigarh stand failed. Ultimately, it is prayed that the workman be reinstated with continuity of service and full back wages.

3. The management contested the case of the workman and filed written statement raising preliminary objection that as per Clause 9 of the terms & conditions of appointment letter, Shri Om Prakash (claimant) would superannuate on attaining the age of superannuation i.e. 58 years. The claimant having attained the age of 58 years stands superannuated. The claimant is not a 'workman' as defined in Section 2(s) of the ID Act. On merits, it is pleaded that the claimant was appointed as Gunman *vide* appointment letter dated 06.07.2013 with effect from 01.02.2012. The terms & conditions of the engagement were enumerated in the appointment. As per Clause 9 of the appointment letter the claimant was to superannuate on attaining the age of 58 years. The claimant was superannuated on attaining the age of 58 years. Job of Gunman requires young and energetic person so the age of 58 years was prescribed in the appointment letter. The claimant has put in about four years of service with the management and there is no illegal termination as alleged. The claimant retired on attaining the age of superannuation so question of issuing show cause notice or payment of notice pay, issuance of charge sheet or conducting or payment of retrenchment compensation does not arise. There was no requirement of compliance of provisions of Section 25-F, 25-G & 25-N of the ID Act as the claimant retired after attaining the age of superannuation. Other averments of the case of the claimant were denied and ultimately, it is prayed that the present industrial dispute be answered in negative.

4. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

1. Whether Shri Om Parkash is not a 'workman' as defined under Section 2(s) of the ID Act ? OPM
2. Whether the services of Shri Om Parkash were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
3. Relief.

5. During the pendency of the industrial dispute, the workman had expired as such the application for bring on record legal representatives of the deceased workman was filed, which was allowed. In support of the case, Shri Pawan Kumar—Son of the deceased Shri Om Parkash stepped into the witness box as AW1. Learned representative for the workman closed the evidence. On the other hand, the management examined Shri Ajay Kumar Pandey—Manager (Industrial Relations) as MW1. Learned representative for the management closed the evidence.

6. I have heard learned representatives for the parties and have gone through the file carefully. My findings on the issues framed in this case are as follows:—

ISSUE No. 1:

7. Onus to prove this issue was on the management and to discharge the same, learned representative for the management has examined Shri Ajay Kumar Pandey—Manager (Industrial Relations) as MW1, who simply deposed that the claimant is not a ‘workman’ as defined under the ID Act but during the course of evidence, nothing has been placed on record to prove that Shri Om Parkash was having any supervisory or managerial powers as to exclude him from the definition of ‘workman’ as defined under Section 2(s) of the ID Act. There is no *iota* of evidence. Even during the course of arguments learned representative for the management has not pressed this issue. Accordingly, this issue is decided against the management.

ISSUE NO. 2 :

8. Onus to prove this issue was on the workman and to discharge the same, learned representative for the workman has examined the son of the deceased workman as AW1, who deposed that his father was orally appointed by the management and joined his services under management No.2 as Cash Officer on 01.10.2005 on monthly wages. At the time of appointment or joining services no terms & conditions of service stipulating the terms and age of employment was settled or any agreement between the management and his father or workmen union was arrived. The management had orally shifted his father from A.P. Securitas Private Limited to Securitrans India Private Limited with effect from 01.02.2012. He further deposed that his father rendered his continuous regular service of more than 10 ½ years with the management and had put in continuous regular services of more than 240 days in a calendar year preceding the date of illegal termination. Management No.2 orally terminated the services of his father with effect from 20.04.2016 without any notice or notice pay, without any charge sheet or inquiry and without any retrenchment compensation. At the time of illegal retrenchment, his father was drawing Rs. 21,209/- per month as wages. The management had joined new hands after illegal termination of his father and junior to his father are still in service. He also deposed that work & conduct of his father remained satisfactory in his entire employment and no notice or inquiry was ever initiated during employment of his father and his father was unemployed since termination of his services.

9. Learned representative for the workman has argued that the workman was appointed by the management as Cash Officer and joined his duty on 01.10.2005 on monthly wages. The workman has rendered continuous regular service of more than 10 ½ years with management but management No.2 orally terminated the services of the workman on 20.04.2016 without any show cause notice, notice pay, without any charge sheet, inquiry, without any retrenchment compensation whereas junior of the workman are still in service. Hence, the management has not complied with the provisions of Section 25-F, 25-G and 25-N of the ID Act. It is further argued that the workman was unemployed till the date of his death. He prayed for allowing of the present industrial dispute.

10. On the other hand, learned representative for the management has examined Shri Ajay Kumar Pandey—Manager (Industrial Relations) as MW1, who deposed that he is working as Manager (Industrial Relations) with the management and is authorised to depose on behalf of the management by virtue of specific powers of attorney dated 22.08.2019 Exhibit ‘R1’. Neither the reference is competent nor claim statement is maintainable. The terms of the engagement of the claimant clearly stipulate in the Clause 9 of the appointment that the claimant would superannuate on attaining the age of 58 years. The claimant having attained the said age stands superannuated so no grouse can be made by the claimant. Copy of appointment letter is Exhibit ‘R2’. The claimant has put in about four years with the management and there is no illegal termination of service as alleged rather the claimant has superannuated. There is no violation of Section 25-F, 25-G and 25-N of the ID Act.

11. Learned representative for the management has argued that the workman has already attained the age of 58 years so his services were superannuated. There is no illegal termination of service of the workman as the workman has apprehended. Hence there is no violation of Section 25-F, 25-G and 25-H, 25-N of the ID Act. Learned representative for the management referred to the Industrial Employment (Standard Orders) Act, 1946. He prayed for dismissal of the industrial dispute.

12. After giving my carefully consideration to the rival contention of both the sides, admittedly the workman had joined as Cash Officer on 01.10.2005. As per allegations levelled by the workman, he has been terminated by the management No.2 without any notice, notice pay without any retrenchment compensation, show cause notice/inquiry, charge sheet whereas representative for the management vehemently argued that he has attained the age of 58 years. Learned representative for the management placed on record appointment letter, Column No.9 of the same is as under:—

“9. You will be superannuated on attaining the age of 58 of years. You may retired if found medically unfit.”

Moreover, it is admitted by AW1 during his cross-examination that his father's date of birth was 29.12.1958. Meaning thereby it is crystal clear that he has already been attained age of 58 years and as per the Clause (3) of Schedule 1-B which deals with model standing orders, the age of retirement is 58 years, the same is reproduced as under :—

“(3) Age of Retirement.—The age of retirement or superannuation of a workman shall be as may be agreed upon between the employer and the workman under an agreement or as specified in a settlement or award which is binding on both the workman and the employer. Where there is no such agreed age, retirement and superannuation shall be on completion of [58] years of age by the workman.”

So no notice, inquiry, charge sheet etc. was required to issue to the workman. Thus, it is a simple case of superannuation after attaining the age of 58 not a case of termination. Further since the workman has already been expired so question of his reinstatement in service does not arise. However, the legal representative has liberty to approach the management for retiral benefits of the workman, as per law if applicable and the management is directed to settle his retirement benefits, if any. In the light of discussion made above, issue is decided against the workman and in favour of the management.

RELIEF:

13. In the light of findings on the issue No.2 above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.). . . .,

(ANSHUL BERRY),

Dated: 14-11-2019.

PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory Chandigarh.
UID No.PB0095.

CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 22nd October, 2019

No. 13/1/9642-HII(2)-2019/17266.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 11/2014, dated 21.08.2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT, Chandigarh between:

SURMUKH SINGH S/O SHRI RATTAN SINGH R/O HOUSE NO.404/1, VILLAGE MALOYA, UNION TERRITORY CHANDIGARH. (Workman)

AND

1. MANAGEMENT OF ALCHEMIST LIMITED SCO NO.12-13, SECTOR 9-D, CHANDIGARH.

2. DIRECTOR-HR MANAGEMENT SERVICES ALCHEMIST LIMITED SCO NO.12-13, SECTOR 9-D, CHANDIGARH.

3. RAMESH JOSHI R/O HOUSE NO.159, SECTOR 9-A, CHANDIGARH. (Management)

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

2. Case of the workman in brief is that he was selected and appointed as Driver by management No.1 & 2 on 27.01.2005 and was reportable to management No. 3. The workman is low paid employee and his net salary as on November 2009 was Rs. 5,056/-. The service conditions of the workman were governed by the Industrial Employment (Standing Orders) Act, 1946 (Act No.20 of 1946). There is a statutory schedule attached with above act by virtue of Section 2(g) and 3(2) of the said act. The schedule deals with the matters to be provided in the standing orders under the said. Ten subjects have been mentioned in the schedule but the subject of transfer is not mentioned in it. By virtue of the provisions of Section 2(f) of the said act, the appropriate Government could prescribe any other matter but no such matter is prescribed. Thus on the matter of transfer the above said act cast upon every employer to frame its own standing orders inconsonance with the provisions of the Act regarding matters mentioned in the schedule of the act. In its absence model standing order shall be applicable. Certifying officer appointed under the act cannot be certified any standing order which may contain any provision not included in the act and its schedule. The above would show that the subject of transfer was never included in the schedule and any certified standing order against the schedule cannot be held operative or binding so as to bind the interest of the workman. The above said act was promulgated by parliament of India requiring employers in industrial employments formally to define conditions of the employment under them. Further consciously no provision of transfer is made as the workers are low paid and half fed so these employees cannot be transferred to any out station despite the fact any such stipulation is inserted in their appointment letters. The workman had continuously and without any break has performed the duties of the Driver to date. To misfortune of the workman he and other Drivers are reportable to management No.3 who is indulging in vices and various activities not expected from a loyal worker/employee of an organisation. Even all the Drivers had lodged a complaint dated 12.03.2009 with a couched language against him but of no use. Management No.3 had tried his level best that the workman may abide his illegal dictates but the workman did not budge, consequently he had started harassing and tormenting the workman by all possible means and also started misinforming the managements. Management No.3 is holding such influential stature and

post in the organisation that he is capable to exert pressure upon every one. The workman is based at Chandigarh. On account of *mala fide*, misinformation of management No.3 and in order to put workman in a tight corner so that he himself may leave up his job, firstly the workman was transferred to Chandigarh to Panchkula to another company i.e. Alchemist Reality Limited *vide* order dated 24.09.2009. The workman being loyal soldier of management duly obeyed the order and had performed his duties at Panchkula though expenses to be incurred for going/coming for duties from Chandigarh to Panchkula could deplete his carry home salary as no additional allowance was payable to him yet it was manageable. Not even a penny as salary or additional allowances is paid to the workman during his posting at Panchkula. As the transfer of the workman from Chandigarh to Panchkula could not cast heat desired by the management on him so in order to put him to tightest corner within one and half month the workman is ordered to be transferred to Banmajra, near Ropar *vide* the impugned letter dated 11.11.2009 again without providing any payment of additional allowance to defray additional expenditure to be incurred by him reaching and coming from the place of posting. The distance from Chandigarh to Banmajra is nearly 38 kilometres which means that every day if the workman may go by his conveyance or by private/public transport he has to incur additional expenditure of about Rs. 100/- daily i.e. Rs. 3,000/- per month. Thus by virtue of the impugned order out of the net salary of Rs. 5,056/- after deducting Rs. 3,000/- his remainder amount of salary came to Rs. 2,056/- whereas in left out paltry amount of Rs. 2,056/- the workman even cannot manage two square meal for his family but to talk of schooling of his kids and medicines for his aged parents so in this situation instead of joining at the transferred place so as to die of hunger the workman would have to leave the job to arrange for two square meals of his family. Earlier also the workman was transferred to Banmajra that too without payment of even a penny as additional remuneration/allowance/CTC but the workman did not feel heat of said order and remained posted there for about two years as on that occasion his officer was resident of Chandigarh from where he was to pick him up and drop daily in official vehicle of the management involving no extra transportation expenditure to him. Order of transfer from its bare perusal seems to be innocuous but in reality is punitive, to put him in such a situation/tight corner wherein he may have the only option to leave the job and is illegal being not only contrary to law but *mala fide*, unjustified, arbitrary and against all canons of justice and fair play so the workman had filed a Civil Suit No.3054 of 2009 challenging the said order of transfer. In the civil court the management after completion of pleadings every time had apprised the Court that it is making efforts to compromise the matter so on one hand had embroiled the workman and even the Presiding Officer of the said Court in compromise whereas on the other hand at the back of the workman had completed departmental proceedings and dismissed him from his service *vide* its order dated 20.04.2012. Even after passing order dated 20.04.2012 the management kept the order of dismissal a secret and kept on getting adjournments to compromise the matter apparently for the reasons that Shri Amit Sharma—Sub Judge Ist Class, Chandigarh was leaning towards the workman but was under transfer. When the order of dismissal and mischief of the management came to the knowledge of the workman, Civil Suit No. 3054 of 2009 was withdrawn with liberty to file present demand notice. Ultimately, it is prayed that the transfer order dated 11.11.2009 and order of dismissal dated 20.04.2012 be set aside and the workman be reinstated in service along with fully salary from the date of order of transfer till order of dismissal from the services and full back wages from the date of dismissal along with all the consequential benefits and also directing the management to pay wages to the workman during his posting at Panchkula from 24.09.2009 to 11.11.2009.

3. The management contested the case of the workman and filed written statement raising preliminary objection that this Court has no territorial jurisdiction to adjudicate the present industrial dispute as the workman was transferred from the establishment of the management at Chandigarh to its factory situated at Banmajra, Near Kurali, District Ropar, Punjab *vide* order dated 11.09.2009 so he ceased to be employee of the establishment of management at Chandigarh with effect from 12.09.2015 after his relieving on 11.09.2009. On merits, it is pleaded that office of the management at Chandigarh is not an 'industrial establishment' so the provisions of The Industrial Employment (Standing Orders) Act, 1946 (Act No.20 of 1946) are not attracted in the present case. Transfer of the workman was in vogue since his appointment. The workman was earlier transferred to Banmajra and remained there for two years and after that he was shifted to Chandigarh and now again transferred to his previous place of posting in the exigencies of the

Company's work. A specific term of transfer is also mentioned in Clause 5 of his appointment letter dated 27.01.2005. The workman accepted his previous transfer without any protest in view of one of the terms of his appointment. The workman was employed as Driver on 27.01.2005 and later on he was transferred at the factory of the management at Banmajra, Near Kurail, Punjab. He remained posted there about two years and later on he was located to work from the office of the management at Chandigarh. In the exigencies of the company's work he was transferred back to Banmajra on 11.11.2009. The workman did not report for duty at Banmajra on 12.11.2009 and thereafter. The workman is a resident of village Maloya and he was transferred from Chandigarh to Panchkula as stop gap arrangement for few days *vide* order dated 24.09.2009. Transfer being an incident of service, no additional payment was required to be paid to the workman. Since the workman did not report at the place of his posting and remained absent unauthorisedly so he was charge sheeted for disobedience of the lawful orders of the management and for his unauthorised absence from duty from 12.11.2009. Despite service, he did not participate in the inquiry. He was dismissed from service on the findings of the Inquiry Officer. Copy of inquiry report was also sent to him for his comments *vide* registered letter dated 29.03.2012 but he did not file any comments. The transfer order is legal, bonafide and justified being incident of service. The workman filed a civil suit in the Civil Court challenging the transfer of the workman. Since, the suit was devoid of any merit and the workman was on the wrong footing, he was to withdraw the suit from the Civil Court unconditionally. During the pendency of the civil suit, there was no stay granted against the transfer order and the workman remained absent from duty in an unauthorised manner for which he was charge sheeted and finally he was dismissed from service for the proved misconduct on the basis of findings of the Inquiry Officer. The dismissal order dated 20.04.2012 were sent to the workman under registered cover at his permanent address at Village Maloya so there was no secrecy involved in issuing the dismissal order. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workman be dismissed.

4. The workman filed replication reiterating the averments of his case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed by the then Presiding Officer:—

1. Whether this Court has no territorial jurisdiction to entertain & try the present reference ? OPM
2. Whether the domestic inquiry conducted by the management is illegal & is liable to vitiated ? OPW
3. If issue No.2 is proved, whether the management is entitled to prove misconduct of the workman in the Court ? OPM
4. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
5. Relief.

5. In support of the case, the workman stepped into the witness box as AW1. Learned representative for the workman closed the evidence. On the other hand, the management examined Shri Sunil Dharwal—Deputy Manager (HR) as MW1 and Shri Kumar Nikshep—Inquiry Officer as MW2. Learned representative for the management closed the evidence.

6. I have heard learned representatives for the parties and have gone through the file carefully. My findings on the issues framed in this case are as follows:—

ISSUE No. 1 to 4 :

7. Onus to prove issue No.1 & 3 was on the management and issue No. 2 & 4 was on the workman but all these issues are taken up together to avoid repetition of discussion. In support of his case the workman examined himself as AW1 and deposed that he is middle class, selected & appointed as Driver by the management No. 1 & 2 on 27.01.2005 and was reportable to management No. 3. The service

conditions of himself are governed by the Industrial Employment (Standing Order) Act, 1946 (Act No.20 of 1946) as the management is industrial establishment having always employed more than 130 workmen at Chandigarh. There is statutory schedule attached with this Act by virtue of Section 2(g) and Section 3(2) of this act. The matter of transfer act cast upon every employer to frame its own standing orders inconsonance with the provisions of the act. Hence subject of transfer was not included in the schedule. He further deposed that he continuously worked without any break and he is based at Chandigarh. Firstly the workman was transferred from Chandigarh to SCO No. 7-8, Sector 5, Mansa Devi Complex, Swastik Vihar, Panchkula to another company i.e. Alchemist Reality Limited *vide* order dated 24.09.2009. The workman being loyal solidier of the management obeyed the orders. Then thereafter the workman was ordered to transfer from Panchkula to Banmajra without providing any payment of additional allowance to defray additional expenditure to be incurred by him in reaching and coming from place of posting. The one side distance from Chandigarh to Banmajra is nearly 38 kilometres and he has incurred additional expenditure Rs. 100/-daily and Rs. 3,000/-. He further deposed that total salary is Rs. 5,056/- and after deducting Rs.3,000/- the remaining amount came to Rs. 2,056/-. He further deposed that order of transfer is punitive and unjustified and arbitrary. Transfer order was also challenged in the Civil Court by filing civil suit. In the mean time after completing the domestic inquiry he was dismissed from service on 20.04.2012. But the order was kept as secret and when he came to know about the order of dismissal he withdraw the civil suit with a liberty to file demand notice. Hence, transfer order dated 11.11.2009 is arbitrary and dismissal of service is 24.04.2012 is without holding any inquiry and the management had not connected him regarding inquiry.

8. Learned representative for the workman has argued that he challenge transfer order dated 11.11.2009 and order of dismissal dated 20.04.2012 as transfer to Banmajra from Chandigarh and Banmajra is merely 38 kilometre away from Chandigarh which is harassment to the workman and it clearly visible that the management wanted that the workman may join at Banmajra to make his himself to subsist with his low salary of Rs. 5,056/-. The workman being a low paid employee could not have been transferred being against the concept of the Industrial Employment (Standing Orders) Act, 1946. He referred to Section 2(G) of the ID Act Industrial Employment (Standing Orders) Act, 1946 and argued that transfer order is illegal and also referred Model Standing Orders and he referred citations **Anang Pal Versus Haryana State Electricity Board, Panchkula, 1996 (1) SCT 383 (P&H)** and **Virender Singh Versus Certifying Officer-cum-Joint Labour Commissioner, Haryana, 1997 (3) SCT 281 (P&H)**.

9. It is further argued that non-obeyance of illegal order is not mis-conduct on the part of the workman. It is further argued that there was illegality in domestic inquiry as it is not held in fair & proper manner as he was proceeded *ex parte* in the inquiry which clearly proves that the management had failed to discharge its onus and failed to serve upon the workman notice of holding of inquiry on 20.01.2012.

10. Learned representative for the workman has vehemently argued that this Court has having jurisdiction to entertain this industrial dispute as prospection of 7 of the ID Act. Further matter of transfer is an order passed by the management under Standing Orders. He refer to Section 10(4) of the ID Act and placed reliance on citation **Bikash Bhushan Gosh & Others Versus Novartis India Limited & Another, 2007 (3) SCT 486 (SC)**.

11. On the order hand, in order to prove its case learned representative for the management examined Shri Sunil Dharwal–Deputy Manager (HR) as MW1, who deposed that he is working with the management in HR Department, presently at Chandigarh and earlier at its plant at Village Banmajra, Near Kurali, District Ropar. He was transferred to Chandigarh *vide* letter dated 01.05.2017. The workman was appointed as Driver at Chandigarh *vide* appointment letter dated 27.01.2005. He was transferred to Banmajra plant from Chandigarh *vide* letter dated 11.11.2009 with immediate effect. He was to report to Banmajra at on 12.11.2009 but he did not report for duty there at all so he is ceased to be employee of Chandigarh office with effect from 12.11.2009. The workman was charge sheeted *vide* charge sheet dated

19.10.2011. A notice was sent by the management and by the Inquiry Officer to participate in the inquiry proceedings but he did not participate in the inquiry proceedings. But he did not participate in the inquiry proceedings and was proceeded against *ex parte* by the Inquiry Officer. The Inquiry Officer found the workman guilty of charges. Copy of inquiry report was sent to the workman under registered cover dated 29.03.2012 Exhibit 'M4'. The workman was dismissed from service on 24.04.2012 Exhibit 'M5'. Salary of the workman for the month of September and October 2009 was transferred to his bank account No. 1081050039562 Exhibit 'M6' & 'M7'. In order to meet urgent requirement the workman was transferred from Alchemist Limited to Alchemist Reality Limited, Panchkula. Copy of transfer letter dated 24.09.2009 is Exhibit 'M8'. Hence, order dated 20.04.2012 is legal & justified.

12. Learned representative for the management also examined the Inquiry Officer Shri Kumar Nikshep as MW2, who deposed that registered letter dated 02.01.2012 was sent by the management to the workman advising him to participate in the inquiry on 06.01.2012 but the workman did not appear then the inquiry proceedings were adjourned to 20.01.2012 with the direction that notice for appearance on 20.01.2012 be sent to the workman but he did not appear then the workman was proceeded against *ex parte*. On 27.01.2012 on the request of the Presenting Officer, the inquiry was adjourned to 01.02.2012 and the management produced its evidence and all documents were placed on record and he submitted the inquiry proceedings including inquiry report.

13. Learned representative for the management has argued that the departmental inquiry is conducted as per rules and proper procedure has been followed in which the workman himself had not joined the inquiry proceedings and the charges against the workman were duly proved. Secondly transfer of the workman is not *mala fide* rather it is a part of service conditions. Hence non-compliance of transfer order is grave misconduct. Moreover, the transfer order cannot be challenged under Section 2-A of the ID Act.

14. It is further argued that this Court has no jurisdiction to entertain this industrial dispute as the workman has been transferred vide letter dated 11.11.2009 and he was relieved on 11.11.2009 and has to join at Banmajra, Near Kurali, District Ropar on 12.11.2009 so the territorial jurisdiction for challenging the transfer order therefore will be there where the workman has been transferred. He placed reliance of citation **Siemens Limited Versus Presiding Officer, Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad, 2004 (1) SCT 601 (AP)**. Hence issue No. 1 & 3 be decided against the workman and in favour of the management.

15. After carefully considering the rival contentions of both the sides, I find that it is nowhere disputed that the workman was appointed as Driver by the management on 27.01.2005. As per contention of the workman he was transferred from Chandigarh to Panchkula on 24.09.2009. Later on the workman transferred to Banmajra, Near Kurali, District Ropar on 11.11.2009 without providing any additional allowance. Before proceedings further let us perused Section 2-A of the ID Act in which it is stated that where an employer discharges, dismisses, retrenches or otherwise terminates the services of the individual workman then the aggrieved workman can challenge such order of discharge, dismissal or retrenchment. Therefore any other matter except the aforesaid cannot be agitated. Here the matter of transfer does not fall within the purview of Section 2-A of the ID Act. Transfer of an employee is part of service condition it is very much mentioned in the service condition Clause 5 of Annexure 1 attached with the appointment letter of the workman that the company reserves the right to transfer him to any other place in India or abroad at its sole discretion. Moreover, as per his own assertion of the workman, he was earlier transferred to Banmajra near Kurali and he had already remained there for two years for the same place. At that time he never agitated for his transfer. The law is very much settled in case titled as **State Bank of India Versus Anjain Syal, 2001 (2) SCT 817 (SC)** wherein Hon'ble Supreme Court of India held that abstaining from work is not legal & justified. Further in case titled as **R.K. Mishra Versus M.P.S.R.T. Corporation & Another, 1998 (1) CLR624(MP)** wherein Hon'ble Madhya Pradesh High Court held that transfer is a

condition of service and the employee is bound to carry out, the orders of transfer. In case titled as **M/s Pearlite Liners Private Limited Versus Manorama Sirsi, 2004 (1) SCT 758 SC** the Hon'ble Supreme Court held that unless there is a term to the contrary in the contract of service, a transfer order is a normal incidence of service.

16. Admittedly when the workman failed to report for duty at the place of his posting at Banmajra despite the receipt of transfer order dated 11.11.2009 and the workman was charge sheeted *vide* charge sheet dated 19.10.2011 for the misconduct of disobedience of the lawful orders of the management and unauthorised absence from 12.11.2009. The transfer of the workman from Chandigarh to Banmajra was with immediate effect on 11.11.2009. A registered letter dated 02.01.2012 was sent to the workman at his correct address whereby he was intimated to appear before the Inquiry Officer on 06.01.2012. Thereafter, a registered AD letter dated 06.01.2012 was sent by the Inquiry Officer on 09.01.2012, whereby the workman was directed to participate in the inquiry on 20.01.2012. The acknowledgement of this letter was received by the Inquiry Officer duly signed by the workman but the workman did not appear before the Inquiry Officer on 20.01.2012. Thereafter, the Inquiry Officer came to the conclusion that the letter dated 06.01.2012 sent to the workman was duly served upon the workman. The Inquiry Officer kept on waiting till 5:00 P.M. but neither none appeared for the workman nor was any communication received. So the workman was proceeded *ex parte*. The inquiry was adjourned to 27.01.2012 for *ex parte* evidence of the management. On 27.01.2012 the inquiry was again adjourned to 01.02.2012 but the workman neither sent any communication nor contacted the Inquiry Officer or the management. On 01.02.2012 the evidence of the management was recorded. Thereafter, the Inquiry Officer submitted his report finding the workman guilty of the charges as contained in the charge sheet dated 19.10.2011. The inquiry has been conducted in accordance with the principles of natural justice and finding of the Inquiry Officer are based on the *ex parte* evidence as produced by the management.

17. Further reliance is placed on citation in **Board of Directors, H.P.T.C. & Another Versus K.C. Rahi, 2008 (3) SCT 27 (SC)** wherein the Hon'ble Supreme Court of India held that it was the workman who knew that domestic inquiry was initiated against him yet he chose not to participate so plea of the principles of natural justice deserves to be waived in view of settled position of law. Also in case titled as **S.B.I. Versus Hemant Kumar, 2011 LLR 449 SC**, Hon'ble Supreme Court of India held that the principles of natural justice cannot be stretched to a point where they would render the in-house proceedings unworkable. In case titled as **PESPU Road Transport Corporation Versus Rawel Singh, 2008 LLR 628 SC**, Hon'ble Supreme Court of India held that when the workman knowingly and intentionally remaining absent and did not participate in the inquiry despite receiving show cause notice. Opportunity of hearing afforded but not availed cannot be said that the inquiry was improper or unfair.

18. So far as issue of territorial jurisdiction is concerned, no doubt the workman was transferred from Chandigarh to Banmajra and as per assertion of the management this Court has no jurisdiction to try this industrial dispute. But in this regard I do not agree with the contention of the management as the workman has challenged the order of transfer dated 11.11.2009 in this industrial dispute and moreover impugned order of dismissal was served upon the workman at his residence at Union Territory, Chandigarh and inquiry is conducted against the workman and dismissal order was also issued to the workman at Chandigarh. In this regard reliance is placed on citation **Bikash Bhushan Gosh & Others Versus Novartis India Limited & Another (supra)** wherein Hon'ble Supreme Court of India held that communication of an order of termination itself may give rise to a cause of action and situs of employment of the workman would be relevant factor for determining the jurisdiction of the Court concerned and unless the management suffered any prejudice, they could not have questioned the jurisdiction of the Court.

19. In the light of discussion made above, it is held that the transfer is legal. Non-joining of duties by the workman at the place of new place of posting is grave misconduct. The regular domestic inquiry conducted by the management, before terminating /dismissing the workman from service, after affording full & final proper opportunity to the workman. Accordingly, issue No.1 is decided in favour of the workman and against the management whereas issue No. 2 to 4 is decided against the workman and in favour of the management.

RELIEF:

20. In the light of findings on the issue No.2 to 4 above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.). . . .,

(ANSHUL BERRY),

Dated: 21-08-2019.

PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0095.

CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 30th December, 2019

No. 13/1/9694-HII(2)-2019/21255.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 32/2015, dated 14.11.2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT, Chandigarh between:

MOHAN LAL S/O SHRI RAGHU NATH, EX-CONDUCTOR NO.721, DEPOT NO.I, CHANDIGARH TRANSPORT UNDERTAKING, PRESENTLY R/O HOUSE NO.554/1, SECTOR 41-A, CHANDIGARH. (Workman)

AND

1. HOME SECRETARY-CUM-SECRETARY TRANSPORT, UNION TERRITORY, CHANDIGARH.

2. DIVISIONAL MANAGER, CHANDIGARH TRANSPORT UNDERTAKING-CUM-DIRECTOR TRANSPORT, UNION TERRITORY, CHANDIGARH. (Management)

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

2. Case of the workman in brief is that he was appointed as Conductor in July 1990 and there was no complaint against him in the initial stage but from the year 1994 some vested Inspectors made false complaints against him. The workman had replied to all the charges but the punishing authority without considering the same appointed Inquiry Officer and put the workman under uspension. During the uspension

period address of the workman was House No. 385/1, Sector 41-A, Chandigarh but the Inquiry Officer sent the letters on address which was mentioned in his service book. The workman had brought to the notice of the authorities about his address but they did not mention the same in his service record so he could not receive the letters and the Inquiry Officer proceeded *ex parte* inquiry against him and proved the charges *ex parte* without giving opportunity of hearing to the workman. On the basis of all the inquiry reports, the workman was issued single cause notice comprising all the inquiry reports but the same were not received due to change of address so he could not reply the same and appear for personal hearing. But the punishing authority without considering the above said facts passed the dismissal order dated 02.12.2005 which is wholly illegal, arbitrary and against the punishment and appeal rules. The workman had not received the dismissal order as the same was sent back by the post master undelivered and after great persuasion and on enquiry the workman received the order from the department and thereafter immediately filed the appeal so there was no delay in filing the appeal. All the inquiries against the workman were conducted at the back of the workman. It was mandatory for the department to serve the notice personally upon the workman but without effecting personal service the workman was proceeded *ex parte*. Since the checking staff were making false reports for their vested interest so member of the union protested against this illegal acts of the checking staff. Thereafter meeting of the union and management was held and with the consent of the union and management it was decided to frame certain guidelines in order to avoid false implication of the Conductors. Thereafter instructions were issued by the management and it was provided that the Inspectors should record the statement of passengers who are found without tickets and conductors have not issued the tickets to them after collecting fare. Further it was also made mandatory to check the cash of the Conductor to know the excess amount in the cash bag of the Conductors. In these cases neither statements of passengers were recorded nor the cash of the workman was checked so whole cases against the workman are illegal and *mala fide*. The findings of the Inquiry Officer are illegal and based on hearsay evidence only as statements of Inspectors have not been supported by any other evidence. Order of punishing authority is illegal and non-speaking in nature. The punishing authority had not given any reasoning in support of his findings. Defence of the workman has not been accepted at all. Order of the appellate authority is also illegal and has been passed in violations of Rule 19 of Punjab Civil Services (Punishment & Appeal) Rules, 1970 as made applicable to the workman. The appellate authority failed to consider the grounds of appeal and no reasoning have been given for not accepting the same. Findings of the appellate authority that the appeal was filed after two years are wrong. The workman requested several times to withdraw the illegal order of dismissal dated 02.12.2005 and order of the appellate authority dated 08.11.2010 / 18.11.2010 but the management failed to withdraw the same. Ultimately, it is prayed that the workman be reinstated with continuity of service and full back wages.

3. The management contested the case of the workman and filed written statement raising preliminary objection that the claim filed by the workman is time barred as the same has been filed much after passing of the impugned order dated 02.12.2005. On merits, it is pleaded that the workman had committed so many frauds and punished for the lapses during his service period. The competent authority was fully agreed with findings submitted by the Inquiry Officers and copies of the same were supplied to the workman to make a representation. The workman failed to attend the personal hearing on various dates in connection with four charge sheets bearing Memo No.3517 dated 17.08.1994, Memo No.928 dated 20.05.1997, Memo No.14143 dated 25.09.2001 and Memo No.16778 dated 10.12.2003. He had personally received summons in all the four cases but neither he appeared for personal hearing nor sent any information. He was given an opportunity with regard to say something by way of his personal hearing but he failed to avail the same. The punishing authority after going through the findings of the Inquiry Officer and facts & circumstances of each case has come to the conclusion that the veracity of the material facts stands proved beyond any doubt. The Inquiry Officer afforded proper & reasonable opportunity to the workman to defend his cases. The workman was a habitual offender and was placed under suspension in fraud case of Rs. 180/-. The punishing authority therefore came to the conclusion that the workman was not a fit person to be retained in service. The workman failed to submit his reply to the charge sheets. The competent authority had ordered to conduct the departmental inquiries to meet with the natural justice to the workman by appointing the Inquiry Officers. The charges against the workman in respect of charge

sheet No.3517 dated 17.08.1994 stands proved ex-parte as he failed to come up for his defence despite the fact that he was having fully knowledge about the date, time and place of inquiry and he personally received the summons under his own signatures well in time. In respect of the cases the workman attended the inquiries. The workman was placed under suspension from 20.06.2005 in another fraud case of fraud of 180/- as he was habitual offender for fraud. He never came to the office as well as Duty Section/Booking Branch as his head quarter during his suspension period was Chandigarh as such his dismissal order were sent at his permanent address as well as local address of the workman through speed/registered post and the same was not received back undelivered. The inspectorate staff has made report against the workman as per fraud made by him. All the cases, the workman was directed to submit the reply to the charge sheet but he failed to submit the same and he only submitted the reply to the charge sheets issued to him vide memo dated 20.05.1997 and 10.12.2003 which were considered and found unsatisfactory. The competent authority then ordered to hold a regular departmental inquiry in the charge sheets issued vide Memo No.3517 dated 17.08.1994, Memo No.14143 dated 25.09.2001 and Memo No. 16778 dated 10.12.2003 by appointment Shri N.C. Puri-General Manager, CTU-II as Inquiry Officer and Shri Surinder Kumar-General Manager-I was appointed as Inquiry officer in the charge sheet issued vide Memo No.928 dated 20.05.1997. The Inquiry Officers conducted the inquiries by following proper procedure laid down under punishment & appeal rules. Order dated 18.11.2010 has passed by the appellate authority after affording due opportunity of personal hearing was also afforded to the workman before passing the impugned order. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workers' union be rejected.

4. From the pleadings of the parties, following issues were framed by the then Presiding Officer:—

1. whether the claim of the workman is time barred ? OPM
2. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
3. Relief.

5. In support of the case, the workman examined himself as AW1. Learned representative for the workman closed the evidence. On the other hand, learned Law Officer for the management tendered into evidence inquiry files of the workman and closed the evidence.

6. I have heard learned representative for the workman and learned Law Officer for the management and have gone through the file carefully. My findings on the issues framed in this case are as follows:—

ISSUE No. 1:

7. Onus to prove this issue was on the management but learned Law Officer for the management has not pressed this issue during the course of arguments. This issue is decided against the management being not pressed.

ISSUE No. 2 :

8. Onus to prove this issue was on the workman and to discharge the same he himself stepped into the witness box as AW1 deposed that that he was appointed as Conductor in July 1990 and there was no complaint against him in the initial stage but from the year 1994 some Inspectors made false complaints against him who have vested interest. The allegation of misappropriation of Rs. 6/- is false as he had issued correct ticket to the passengers and load was of small quantity for which no ticket is required to be has to be issued. Second charge of fraud of Rs. 4/- is also false as the passengers boarded the bus from Balongi and alighted at Balongi. When the person boarded the bus from the same place and alighted from the place the question of charging fare does not arise. Third charge is also false as the workman was in process of issuing the tickets as the distance between Kurali to Sahoran is only two kilometres and he was in process of issuing tickets when the bus was checked. He further deposed that he had issued tickets of right place from Lalru to Ambala and the tickets were rightly punched but the checking staff on suspicion made a false

complaint for the travelling of the passengers from Derabassi to Ambala City. Next charge is also false as the distance between the Kharar to Desu Majra is only two kilometres and he was still in process of issuing the tickets when the bus was checked. Next charge is also false as he had issued ticket for a load from Delhi to Pipli of half ticket of Rs. 40/- but the checking staff made a false complaint of the said load from Delhi to Chandigarh. He further deposed that he had replied to all the charges but the punishing authority without considering the same appointed Inquiry Officers and he was put under suspension. During the suspension period his address was House No. 1385/1, Sector 41-A, Chandigarh but the Inquiry Officer sent the letters on address which was mentioned in his service book. He had brought to the notice of the authorities his address but they did not mention the same in his service record so he could not receive the letters and the Inquiry Officer proceeded *ex parte* inquiry against him and proved the charges *ex parte* without giving opportunity of hearing to him. He further deposed that on the basis of all the inquiry reports he was issued single show cause notice comprising all the inquiry reports but the same were not received due to change of address so he could not replied the same and appeared for personal hearing. The punishing authority without considering the facts passed the dismissal order dated 02.12.2005 which is illegal, arbitrary and against the punishment and appeal rules. He further deposed that he had not received the dismissal order as the same was sent back by the postmaster undelivered and after great persuasion and on inquiry he received the order from the department thereafter immediately filed the appeal so there was no delay in filing the appeal. All the inquiries against him were conducted at his back. He also deposed that since the checking staffs were making false reports for their vested interest so with the consent of the union and the management it was decided to frame certain guidelines in order to avoid false implication of the Conductors. Thereafter instructions were issued to record the statement of the passengers and check cash of the Conductors but in the present case neither statements of passengers were recorded nor his cash was checked. Copies of instructions are Mark 'A' to 'C'. Findings of the Inquiry Officer are illegal and based on hearsay evidence only as statements of the checking is not supported by some other supporting evidence. The order of the appellate authority is illegal and has been passed in violation of Rule 19 of Punjab Civil Services (Punishment & Appeal) Rules 1970 as the appellate authority failed to consider the grounds of appeal and no reasoning have been accepted. Copy of appeal and order passed therein is Exhibit 'W1' & 'W2'.

9. Learned representative for the workman has argued that the workman was appointed as Conductor in July 1990 and there was no complaint against him in the initial stage but later on some vested Inspectors made false complaints against him and allegations of misappropriation of Rs. 6 is false as load in question was small quantity so tickets need not be issued, second charge of fraud of Rs. 4 is also false the passengers boarded the bus and alighted without tickets at same place and third charge is also false as the workman was in process of issuance of tickets as distance from Kurali to Sahoran is only two kilometres. Further next charge sheet is also false as distance between Kharar to Desu Majra is only two kilometres and the workman was still in process of issuing the tickets and next charge is also false as workman had issued tickets for a load from Delhi to Pipli of half ticket of Rs. 40/- but the checking staff made a false complaint of said load from Delhi to Chandigarh. It is further argued that the workman was charge sheeted on 25.09.2001. No report of way bill was made by the checking staff regard to alleged fraud and way bill was not produced and there was no statement of passengers. Further the inquiry report was not supplied to the workman. Further in another charge sheet of dated 20.05.1997 no statement of passengers was recorded and there was no admission by the workman. It is further argued that another charge sheet was dated 17.08.1994. Lastly there was charge sheet dated 10.12.2003 and learned representative for the workers' union has referred page 27, 53, 85 of inquiry file in which the complaint was made to the Director Transport that false reports was made and the workman had given tickets of Rs. 40 and load was from Delhi. Punched ticket for Rs. 40/- issued before checking and before closing ticket by the Inspectors at the time of checking is clear from the way bill at page 53. He further argued that for all the inquiry reports

the workman was issued single show cause notice. The workman had not received dismissal order. Inquiries were conducted against the workman at the back of the workman. Hence order of punishment authority is illegal and non-speaking. Further order of appellate authority is illegal as the appeal was filed within limitation from the date of knowledge. He has placed reliance upon citation **Ms. G Valli kumari Versus Andhra Education Society & Others, 2010 (2) SCC 497** and **State of Punjab Versus Dr. Harbhajan Singh Greasy, 1996 (9) SCC 322**. He also referred to order of Hon'ble Central Administrative Tribunal passed in **Surinder Singh Versus Union Territory, Chandigarh through Home Secretary-cum-Secretary Transport & Others, OA No. 60/183/2015 decided on 23.11.2017**.

10. On the other hand, learned Law Officer for the management tendered into evidence inquiries files of the workman and closed the evidence.

11. Learned Law Officer for the management has argued that statement of claim filed by the workman is time barred. Order dated 02.12.2005 has been by the competent authority after affording full opportunity to the workman. Order dated 18.11.2010 was passed by the appellate authority after affording due opportunity and personal hearing so allegation levelled by the workman is wrong and denied whereas charges are legal and justified. The competent authority fully agreed by the findings of the Inquiry Officer. Copy of same were supplied to the workman *vide* different memos but the workman failed to reply to the charge sheet so principles of natural justice has been followed. Order is legal and valid. He prayed for dismissal of the present industrial dispute.

12. After giving my careful considerations to the rival contentions of both the sides I find that it is nowhere disputed that the workman was appointed in July 1990 and was charge sheeted on difference dates i.e. 17.08.1994, 20.05.1997, 25.09.2001 and 10.12.2003. It is also nowhere disputed that as per assertion of the workman, he had replied to all the charges but the punishing authority without considering the same appointed the Inquiry Officers and the workman was put under suspension. As per averments of the workman, he was issued single show cause notice but the same was not received due to change of address. But as per contra the charge sheet served to the workman was legal & justified.

13. From the perusal of the file, I find that inquiries files with regard to different charge sheets have been duly attached with the file. As regards charge sheet dated 17.08.1994 is concerned in which the workman was charge sheeted for misappropriation and for this lapse he was charge sheeted *vide* Memo No.3517/DM/CTU-III/94 dated 17.08.1994. During the course of checking one passenger was travelling from Kurali to Mohali Barrier with load of one ticket. Further as per charge sheet dated 20.05.1997 the workman had guilty of defrauding Rs. 56/- from the Government revenue which amounts to grave misconduct on his part in which the workman had collect full fare of Rs. 56/- at the rate Rs. 7/- from the passengers and had not issued tickets to the passengers. Thirdly on 10.12.2003 the workman was charge sheeted for defrauding Rs. 126/- by not issuing tickets of the load and charge sheet dated 25.09.2001 was also served upon the workman for defrauding Rs. 36/- from the Government revenue which amounts to misappropriation on his part. As per inquiry files the workman was directed to submit reply to the charge sheet but he failed to submit the same and he had only submitted reply to the charge sheet issued to him *vide* Memo dated 20.05.1997 and 10.12.2003 which was considered and found unsatisfactory then the competent authority ordered to hold an departmental inquiry into charges by appointing different Inquiry Officers who conducted the inquiries by following proper procedure laid down under Punishment & Appeal Rules. In inquiry of the charge sheet dated 17.08.1994 the workman was proceeded against *ex parte*. The competent authority agreed with the findings of the Inquiry Officer and copy of the same were supplied to the workman *vide* different memos to make representation. The workman failed to appear for the personal hearing in connection with four charges. After going through the findings of the Inquiry Officers and facts & circumstances of each case I came to the conclusion that veracity of material facts stands proved beyond any doubt. Order whereby the punishing authority came to the conclusion that the workman is not fit person to be retained

in service and dismissed him from service is legal and valid. The law is well settled in case **Bank of India & Others Versus Degala Suryanarayana, CA No. 3053 and 3054 of 1997 decided on 12.07.1999** by the Hon'ble Supreme Court of India in which it was held as under :—

“12. Regulation 7 of the Bank of India Officer Employees (Discipline and Appeal) Regulations, 1976 accords with the settled service jurisprudence and provides as under :—

7. Action on the inquiry report.—(1) *The Disciplinary Authority, if it is not itself the Inquiry Authority, may for reasons to be recorded by it in writing, remit the case to the Inquiring Authority for fresh for further inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of regulation 6 as far as may be,*

(2) The Disciplinary Authority shall, if it disagrees with the findings of the Inquiring Authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the Disciplinary Authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in regulation 4 should be imposed on the officer employee it shall, notwithstanding anything contained in regulation 8, make an order imposing such penalty.

(1) if the Disciplinary Authority having regard to its findings on all or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the officer employee concerned.

13. *In the case at hand a perusal of the order dated 5.1.1995 of the disciplinary Authority shows that it has taken into consideration the evidence, the finding and the reasons recorded by the Enquiry Officer and then assigned reasons for taking a view in departure from the one taken by the Enquiry Officer. The Disciplinary Authority has then recorded its own findings setting out the evidence already available on record in support of the finding arrived at by the Disciplinary Authority. The finding so recorded by the Disciplinary Authority was immune from interference within the limited scope of power of judicial review available to the Court.”*

14. Further in case **Union of India (UOI) & Others Versus Parma Nand, Civil Appeal Nos. 1709 of 1988 with SLP (Civil) No. 6998 of 1988** it has been held by the Hon'ble Supreme Court of India that the Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where findings are not arbitrary or utterly perverse. Imposing punishment is matter exclusively within the jurisdiction of competent authority. The Tribunal has no power to substitute its own discretion for that of authority if penalty can lawfully be imposed on proved misconduct. Adequacy of penalty not matter for the Tribunal to be concerned with unless penalty *mala fide*. The Tribunal cannot interfere with penalty if conclusion of Inquiry Officer based on evidence even if part of it found to be irrelevant or extraneous to matter. Further reliance is placed on case **Uttarakhand Transport Corporation (Earlier known as U.P.S.R.T.C.) & Others Versus Sukhveer Singh, Civil Appeal No. 18448 of 2017 decided on 10.11.2017** and **Apparel Export Promotion Council Versus A.K. Chopra, CA Nos. 226-227 of 1999 decided on 20.01.1999** by Hon'ble Supreme Court of India.

15. In the present inquiries has been conducted as per procedure and principles of natural justice so the punishment order passed is legal and valid. Accordingly, this issue is decided against the workman and in favour of the management.

RELIEF :

16. In the light of findings on the issue No. 2 above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.). . . .,

(ANSHUL BERRY),

Dated: 14-11-2019.

PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory Chandigarh.
UID No. PB0095.

Secretary Labour,
Chandigarh Administration.

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